The Honorable Dennis Schornack
U.S. Chairman, International Joint Commission
Transportation and Infrastructure Committee Water Resources Subcommittee
"Great Lakes Water Quality and Restoration"
Friday, May 21, 2004

Chairman Duncan, I appreciate the opportunity to address the complex and vitally important issue of Great Lakes water quality and restoration of the world's most precious freshwater resource. In fact, restoring the greatness of the lakes is a top priority of the International Joint Commission (IJC) under the terms of the reference articulated in Article VII of the Great Lakes Water Quality Agreement. I should note that my comments today are my own and do not necessarily reflect the views of the commission as a whole.

The International Joint Commission

Created by the Boundary Waters Treaty of 1909, the IJC prevents and resolve disputes between the United States and Canada regarding our shared waters. We also operate 19 dams and other control structures on the shared waterways that traverse more than 5,000 miles of the U.S.-Canadian boundary.

The IJC is made up of three commissioners appointed by the President of the United States with the advice and consent of the Senate and three appointed by the Governor-in-Council of Canada (the cabinet). Commissioners serve as independent watchdogs without instruction from our respective governments. Upon taking office, commissioners take an oath to exercise judgment independent of the very governments that appointed us and to serve the common good of the citizens of both countries. We operate as a unitary body that uses joint fact-finding to make decisions by consensus based on the best available science.

The treaty that created the IJC gave each nation equal rights to use our shared waters, including the Great Lakes, but with those rights came important responsibilities. For example, Article IV stipulates "waters flowing across the boundary shall not be polluted on either side to the injury of health or property on the other." In addition, Article VIII sets the order of precedence for the use of boundary waters:

1. domestic and sanitary purposes;
2. navigation, including the service of canals for the purposes of navigation;
3. power and for irrigation purposes.

Over 60 years of successful work under the Boundary Waters Treaty led the U.S. and Canada to once again turn to the commission to play a key role in monitoring and assisting in the implementation of the Great Lakes Water Quality Agreement of 1972. Specifically, every two years, we issue a report in which we evaluate the progress of the two countries in meeting the terms of the agreement to restore beneficial water uses in areas where they have been severely degraded.

The operating principles of the IJC – our independence, the equality of commissioners and countries, our binational science-based approach and our objectivity – make the IJC the ideal watchdog over how well the countries keep their promises under the Great Lakes Water Quality Agreement. The IJC plays a key role in assessing progress and assisting in the implementation of the agreement.

What is Restoration?

While "restoration" is the goal of the Agreement and of legislation that has been proposed, the definition of the term remains elusive. "Restore the Greatness" is a powerful theme, and it even fits on a bumper sticker. But what does it mean? A colleague recently described restoration as a "social dialogue to discern how we want to design the ecosystem of which we are a part."

Defining restoration means that we must first define priorities. Setting priorities is absolutely critical so that we know where to start – where to spend the first dollar. At the same time, it is just as critical to set goals or endpoints, so that we know when we're done. That's how we can figure out how much it will cost. And all along the way, we need mileposts so that we can measure progress or to put it more bluntly, the "return on our investment." This process will help us define what we mean by "restoration" so that we know when we've arrived at our destination.

From the perspective of the IJC, the Great Lakes Water Quality Agreement drives our involvement in Great Lakes restoration. The agreement eloquently establishes what I have termed the "three-legged stool" that supports ecosystem health – that is restoring and maintaining the chemical, biological and physical integrity of the Great Lakes.

Quickly, I'd like to highlight each leg of the stool and emphasize that all three legs must be equally strong and equally long or our approach to ecosystem health will become unbalanced and risk being toppled.

Restoring Chemical Integrity – Cleaning Up AOCs

When it comes to priorities, there is no doubt that cleaning up Areas of Concern (AOCs) in the Great Lakes must be a top priority for the investment of public resources. These toxic hotspots contaminated with a legacy of pollution dating back more than 100 years are the primary locus of food chain contamination, leading to elevated concerns regarding human health. Of the 43 AOCs in the U.S. and Canada, only two have been removed from the list so far and both are in Canada. None of the five binational or 26 U.S. only sites have been delisted. Our countdown to clean – two down in two decades – is painstakingly slow.

But that is changing because of President Bush's commitment to fully fund the five-year $270 million Great Lakes Legacy Act. The president should be commended for committing $45 million in the '05 federal budget – four times this year's funding – to remove contaminated sediment in AOCs. I urge Congress to keep that commitment.

Some have criticized funding for the Legacy Act a being a "drop in the bucket." But the EPA's Tom Skinner got it right when he said: "When you have been in the middle of an extended drought, it's the wrong time to complain when it starts to rain." What makes sense about the Legacy Act is that it is all about projects and progress, not just planning and process.

Spending on cleaning AOCs is only now ramping up. Let's learn from the implementation of the Great Lakes Legacy Act, develop targets, actually move toward the goal of having ten sites delisted by 2010, and as programmatic capacity develops, take a look at expanding the program. The bottom line is that cleaning up the legacy of pollution is clearly priority one in restoring the chemical integrity of the Great Lakes.

Restoring Chemical Integrity – Balancing Risk and Return

Other priorities with respect to chemical integrity are not so clear-cut. For example, it is time to stop dividing the periodic table into good elements and bad. The very concept of sustainability is derived from the responsible human use of all the elements that were forged in the fires of creation and their many and diverse combinations.

One such element is mercury. It concerns me greatly that the debate over regulating mercury has become increasingly polarized and politicized at the expense of science. For example, most scientists would tell you that the health effects of low-level mercury exposure are uncertain and not adequately explained by current research. Therefore, logic tells me that if health impairments cannot be identified, then neither will we be able to identify health improvements from reducing mercury emissions.

Because of this uncertainty, some say we should avoid all risk. But the reality is there is no such thing as a risk-free environment. Rather, we must live in a risk-benefit environment. We make trade-offs every day that allow for scarce resources to be allocated where the benefit – the return on investment – is highest.

That's precisely why I believe that the Administration's cap and trade proposal that captures the co-benefits of NOx and SOx reductions with reductions in mercury emissions from coal-fired power plants is the right path. The proposal is a rational, cost-effective approach that encourages clean-up at the highest emitting plants first and allows states to allocate emissions credits in such a way as to avoid local hotspots.

I am also concerned that while the U.S. is embarking on what may be the world's most ambitious and certainly the most expensive attempt to control mercury emissions from coal-fired power plants, the world's biggest users of coal have no such intention. For example, China accounts for 55 percent of global mercury emissions and its share is rapidly growing – a 25 percent increase in emission in the last five years alone.

As a result, a more stringent and costly effort to control mercury emissions in the U.S. could have a very unfortunate unintended consequence. That is, energy prices for manufacturers and for consumers could be driven up by an estimated 8 percent, reducing the ability of American companies to compete, driving even more jobs and economic growth to China. In

return, what do we get? More mercury will be blown here in the atmosphere because of their insatiable appetite for coal. I am not an economist, but it seems to me that trading jobs for mercury is a pretty lousy deal.

Restoring Biological Integrity

Let's turn to the biological leg of the stool. To me, aquatic invasive species are the number one threat to the biological integrity and biodiversity of the Great Lakes. Researchers will soon announce that they have identified 181 invaders in the waters of the Great Lakes. New invaders are being identified at a pace of two new species each year, bringing our Great Lakes ecosystem to the verge of invasional meltdown.

Please, understand that this biological pollution is just as persistent and just as damaging as any toxic chemical, even more so, because chemicals don't reproduce. Invaders like the Asian carp can lay upwards of two million eggs a year! Just listen to a recent report from a biologist working on the Illinois River, just 50 miles or so southeast of Chicago and Lake Michigan:

> "For the past two days the silver and big head carp have been jumping just below the power house on the downstream side of the dam. It is the most awesome sight I have ever seen! It looks like something out of outer space. There are these HUGE fish jumping 6-8 feet out of the water...one, two and three at a time…. today it was just incredible. You don't even need binoculars. They are as clear as a bell out there. And they are scary too. Just to think what they can do to the ecosystem of the river and also harm to the recreational boaters."

Just imagine how these up to 100-pound aquatic vacuum cleaners could devastate the $4.5 billion fishery in the Great Lakes. That's the bad news. The good news is that preventing the onslaught of aquatic invasive species is the most solvable problem in the Great Lakes today.

Why? Because we know that by far, the busiest pathway for invasion is ballast water discharged into the Great Lakes by foreign, ocean-going vessels. Just as zero discharge is the goal agreed to by the U.S. and Canada when it comes to persistent toxic chemical releases, zero discharge of invasive species should also be the goal of any ballast water discharge standard.

To achieve that goal, we should look beyond shipboard ballast water treatment systems to other solutions, including shore-based treatment and maybe even the notion of keeping ocean-going ships that pose a risk of releasing biological pollution out of the Great Lakes and moving the cargo to Lakers or other modes of transportation. Closing the door to invasions may be that important. Let's focus on how to move cargo, not creatures.

The International Maritime Organization's ballast water convention is a step in the right direction, but it's not tough enough and will take too long. I commend the U.S. Coast Guard for their work negotiating this convention. They and their colleagues from Canada fought hard for tougher standards but they came up short. But they did succeed in negotiating a provision allowing party countries and regions to adopt tougher standards to protect vulnerable ecosystems like the Great Lakes. The opportunity that Congress has now is to take the tough standard the

Coast Guard fought for at the IMO and insert it into the National Aquatic Invasive Species Act. Pass NAISA, set the standard, and the world will follow.

Restoring Physical Integrity

The third leg of the stool – physical integrity - might be our greatest restoration challenge. Hardened shorelines, habitat destruction, and dramatically altered hydrological flows all challenge the sustainability of our shared ecosystem.

In this regard, I am impressed with what Chicago Mayor Richard Daley has done to incorporate conservation concepts into urban designs that soften the impact of the human footprint. Mayor Daley is moving Chicago to build permeable parking lots, to better manage the timing and treatment of storm water flows, and to even install green roofs on buildings like City Hall.

I am also excited and encouraged by the IJC's own Lake Ontario/St. Lawrence River Study – a $20 million examination of how to change our orders for the operation of the Moses Saunders Dam for the first time in nearly 50 years. We are looking to manage water levels and flows not just for hydropower and navigation, but also for conservation concerns such as fish spawning and loon nesting as well as addressing the concerns of riparians and recreational boaters.

All along the shores of the Great Lakes, members of Congress, mayors, governors, activists and industry are looking at new ideas to restore physical integrity so that water no longer meets concrete at the shoreline, but rather sand and natural habitat. One example is the new Tri-Centennial State Park in Detroit that opened just yesterday. Situated on the Detroit River, it is Michigan's first urban state park.

As with many restoration projects, restoring physical integrity can be expensive, but I think the returns might possibly be the most rewarding of all – growing cities, vibrant, alive lakefronts, clean beaches and abundant wildlife.

Review of the Great Lakes Water Quality Agreement

Now, let me bring the three legs of the stool back together again in the context of the upcoming review of the Great Lakes Water Quality Agreement. Conducted by the governments of the U.S. and Canada, the review is triggered every six years when the IJC releases it biennial report on Great Lakes water quality.

When it was written in 1972 and updated in 1978 and 1987, the agreement set very clear and specific restoration goals for chemical integrity. But in my view, it lacks specific goals for achieving biological and physical integrity. Arguably, the stool is out of balance. Without a doubt, it hasn't kept up with scientific developments nor does it address contemporary challenges. In short, the agreement is out of date.

That's why I support a comprehensive review of the agreement. We must ask ourselves, what has worked, what has not, and how can we do better? To this end, later this year, the IJC will transmit to the governments our advice on how the review should be conducted.

For example, as part of the review process, I also think we ought to look at the notion of elevating the Great Lakes Water Quality Agreement to treaty status, making it enforceable under law, and giving the U.S. Senate a stake in its implementation. Who knows? Maybe involving your friends in the other body could make a major investment in restoration more forthcoming.

What's important is that a renewed agreement could provide the blueprint for binational actions to restore the greatness of the Great Lakes.

Who is in Charge?

Finally, let me comment briefly on what has become a bone of contention when it comes to Great Lakes restoration – who is in charge? The question was asked very directly by Sen. Voinovich at a hearing similar to this one last year. He wanted to know who was conducting the Great Lakes orchestra.

As noted in a GAO report, there are many programs in many departments at both the federal and state levels that work to restore the Great Lakes ecosystem. However, leadership and coordination is lacking. Tom Skinner and EPA's Great Lakes National Program Office do not have the reach or authority to coordinate programs across more than ten cabinet-level agencies.

To this end, I commend the President for his action earlier this week to put someone in charge – to designate the EPA as the conductor of the Great Lakes orchestra. The executive order President Bush signed creating the Great Lakes Interagency Task Force is the most efficient and effective way of focusing attention on the Great Lakes combined with the clout to develop and implement a restoration plan. In particular, the order correctly recognizes the binational character of the lakes and the commission stands ready to facilitate and help coordinate the achievement of binational restoration goals.

I might also note that the new Task Force should welcome public input and advice from academia, industry, conservationists and the foundation community. Letting concerned citizens who love the Great Lakes be a part of process would serve as a "reality check" and sounding board for task force actions.

When all the players begin playing from the same score and following the same leader, achieving our restoration goals will become a reality.

Thank you and I look forward to answering your questions.